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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ETHAN DION MOORE,

Defendant and Appellant.

F076899

(Super. Ct. No. VCF341960)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Kathryn T. Montejano, Judge.

Nicholas Seymour, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Clara M. Levers, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Smith, J. and DeSantos, J.

A jury convicted appellant Ethan Dion Moore of second degree robbery (Pen. Code,¹ § 211). On appeal, Moore contends the court imposed an unauthorized criminal protective order. We find merit to this contention, strike the order at issue, and remand the matter to the trial court for further proceedings. In all other respects, we affirm the judgment.

FACTS

On October 1, 2016, at around 12:30 p.m., 67-year-old Pamela Rogers was walking on Acequia Street in Visalia when Moore grabbed Rogers's purse and threw her to the ground. As Moore ran off with the purse, Rogers yelled out that Moore had her purse. Some bystanders began chasing Moore and he eventually threw the purse in a bush where a bystander picked it up and returned it to Rogers. Meanwhile, other bystanders tackled Moore and detained him. During a post-arrest interview, Moore stated that after hearing a voice in his head tell him to "[g]o take the items[,]” he ran to Rogers and snatched her purse.

On November 16, 2016, the Tulare County District Attorney filed an information charging Moore with robbery (§ 211; count 1) and elder abuse (§ 368, subd. (b)(1); count 2).

On December 14, 2017, a jury convicted Moore of robbery and acquitted him of elder abuse.

On January 3, 2018, the court placed Moore on probation for three years, on condition that he serve a year in local custody. The court also issued a protective order pursuant to section 136.2, subdivision (i)(1) that named Rogers as a protected person and had a duration of four years.

¹ All statutory references are to the Penal Code.

DISCUSSION

Moore contends the court lacked authority to impose a restraining order pursuant to section 136.2, subdivision (i)(1) because he was not convicted of an offense involving domestic violence. He further contends the appropriate remedy is to strike the order and remand the matter to the trial court for it to determine whether to exercise its discretion to impose the restraining order as a condition of probation under section 1203.1.

Respondent concedes the restraining order was unauthorized and should be stricken. We agree with the parties that the order was unauthorized and must be stricken and with Moore that the matter should be remanded to the trial court.

“The courts have construed section 136.2, subdivision (a) to authorize imposition of protective orders only during the pendency of the criminal action. [Citations.] Thus, once the defendant is found guilty and sentenced, the court’s authority to issue a protective order under section 136.2, subdivision (a) generally ceases. [Citations.]

“However, in 2011, the Legislature responded to this restrictive judicial construction by creating an exception to the preconviction limitation of a section 136.2 restraining order for *domestic violence* cases. [Citation.] Effective January 1, 2012, the Legislature added section 136.2, subdivision (i) to the statutory scheme so that a 10-year postconviction protective order would be permissible when a defendant was convicted of a domestic violence offense. Section 136.2(i)(1) state[d]: ‘In all cases in which a criminal defendant *has been convicted of a crime involving domestic violence as defined in Section 13700* ..., the court, *at the time of sentencing*, shall consider issuing an order restraining the defendant from any contact with *the victim*. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.’ ” (*People v. Beckemeyer* (2015) 238 Cal.App.4th 461, 465-466.)

The version of section 136.2 in effect when Moore was sentenced also authorized the court to issue an order pursuant to section 136.2, subdivision (i)(1) restraining a defendant convicted of certain enumerated crimes, of which robbery is not one, “or [of] a crime that requires the defendant to register pursuant to subdivision (c) of Section 290[.]”² (§ 136.2, subd. (i)(1).)

Moore’s robbery offense did not involve domestic violence, he was not convicted of an offense enumerated in section 136.2, subdivision (i)(1), and he was not required to register as a sex offender. Therefore, we agree with the parties that the restraining order the court issued was unauthorized. Further, we will strike the order and remand the matter to the trial court to exercise its discretion whether to impose the order as a condition of probation pursuant to section 1203.1. (*People v. Selga* (2008) 162 Cal.App.4th 113, 120.)

DISPOSITION

The criminal protective order is stricken. The matter is remanded to trial court to exercise its discretion whether to impose a similar stay-away order as a condition of probation under Penal Code section 1203.1. In all other respects, the judgment is affirmed.

² Section 290, subdivision (c) requires any person who is convicted of any of the sex offenses enumerated in that subdivision to register as a sex offender. (§ 290, subd. (c)).